

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.3973 OF 1997

POLYLINK POLYMERS (INDIA) LTD.

VERSUS

GUJARAT ELECTRICITY BOARD

Appearance:

MR KB PUJARA for Petitioner

MR TUSHAR MEHTA for Respondent

CORAM: MR.JUSTICE S.K.KESHOTE

Date of Order: 19/01/1998

C.A.V. ORDER

Heard learned counsel for the parties.

2. It is not in dispute that the petitioner is a consumer of the Gujarat Electricity Board at its factory where high tension connection has been installed by the Board. On 12.7.96, the officer of the respondent-Board found that the meter installed at the factory of the petitioner for recording consumption of high tension electricity was running slow by 40.54%. On 1.11.96, the Board issued supplementary bill to the petitioner for the period from 7.7.95 to 30.9.96 (15 months) for Rs.8,34,690.29 ps. The petitioner, against this supplementary bill, preferred application under Section 26(6) of the Indian Electricity Act, 1910 (hereinafter referred to as 'the Act, 1910'), before the Electrical Inspector, Government of Gujarat. This application filed by the petitioner came to be decided by the Electrical Inspector on 14.2.97 and the said authority found that the meter installed at the petitioner's factory was running slow by 39.84%. The supplementary bill which has been given to the petitioner by the Board dated 1.11.96 was quashed and direction was given to issue fresh supplementary bill for six months from 12.1.96 to 12.7.96. The petitioner, being dissatisfied with the aforesaid decision of the Electrical Inspector preferred an appeal under Section 36(2) of the Act 1910, before the State Government on 18/19.2.97 and admittedly that appeal is pending till date. Thereafter, on 25th February 1997, the respondent issued a supplementary bill for a sum of

Rs.5,73,919.96 ps. The grievance of the petitioner is that pending appeal of the petitioner under section 36 of the Act, 1910, before the State Government, no such supplementary bill could have been issued. Further grievance has been made that the respondent-Board has also threatened to disconnect the power supply of the petitioner in case of non payment of supplementary bill within ten days. At this juncture, the petitioner approached this Court by filing Special Civil Application No.2004 of 1997 and prayed for relief against disconnection of power supply on the ground of non payment of revised supplementary bill during the pendency of the appeal before the State Government. The Special Civil Application No.2004 of 1997 was decided by order of this Court on 12.3.97, xerox copy of which is on record of this Special Civil Application. From the order dated 12th March 1997, I find that earlier the petitioner had filed in this Court, Special Civil Application No.10676 of 1996, in which it appears that the supplementary bill which was issued to the petitioner by the Board on 1.11.96 has been challenged. I find further from the order of this Court dated 12.3.97 that the Special Civil Application No.10676 of 1996 was decided by this Court on 16.1.97 and this Court has restrained the respondent from enforcing the payment of supplementary bill dated 1.11.96 and disconnecting the power supply of HT installation of the petitioner, during the pendency and disposal of the application that was pending before the Electrical Inspector, under Section 26(6) of the Indian Electricity Act, 1910. This Court has further ordered to stay any order passed by the Electrical Inspector for a period of ten days from the date of communication of the order by the Electrical Inspector so as to enable the petitioner to approach the higher forum. Taking into consideration the order of this Court dated 16.1.97 passed in Special Civil Application No.10676 of 1996, this Court, on 12th March 1997, in Special Civil Application No.2004 of 1997, ordered as under:

In view of the aforesaid position and in the facts and circumstances of the case, particularly when the petitioner was protected against the disconnection of the power supply, the first respondent is restrained from discontinuing the power supply of the petitioner's HT installation till the petitioner prefers such application for stay/injunction before the appellate authority and till the period such application is disposed of by the appellate-authority. The petitioner shall prefer such application on or before March 21, 1997 and the appellate authority thereafter shall

expeditiously hear and dispose of such application on merits and in accordance with the law.

In view of the aforesaid directions, Mr.Pujara, learned Advocate for the petitioner, seeks leave to withdraw the petition. Disposed of as withdrawn.

So this Court has restrained the Board from disconnecting the power supply of the HT installation of the petitioner till it prefers application for stay/injunction before the appellate authority and till the period such application is disposed of by the appellate authority. The petitioner was required to file application for stay/injunction before the appellate authority on or before 21st March 1997 and the appellate authority was directed to dispose of the same expeditiously in accordance with law. Against the order of this Court dated 12th March 1997, passed in Special Civil Application No.2004 of 1997, the Board preferred Letters Patent Appeal No.397 of 1997 which came to be disposed of on 10th April 1997. A copy of the order of the Division Bench in L.P.A. aforesaid has also been filed by petitioner on record of the Special Civil Application. The grievance of the Board against the order of the learned Single Judge, in the L.P.A., appears to be that in case the order of this Court is taken to be as laying down rule by this Court in all cases, then the aggrieved parties who have filed appeals against the order of the Electrical Inspector will get the interim relief from this Court. However, to mitigate that apprehension of the counsel for the Board, the Division Bench of this court in the L.P.A. observed that in case within six months the application of the petitioner for stay/injunction is not decided by the appellate authority, the Board was at liberty to approach this Court. That order has been passed by this Court on 10.4.97.

3. On 24th May 1997, the Board has issued additional supplementary bill for Rs.5,69,287.68 ps. for the same period and on the same ground of slowness of meter stating that the demand charges and additional charges were not assessed as the meter was under clarification. This additional supplementary bill was made a cause of action by the petitioner in this Special Civil Application to approach this Court.

4. This petition has been filed by the petitioner before this Court on 30th May 1997 and it is pending for admission till date. The petitioner filed additional

affidavit in this case on 27th August 1997, in which it has been stated that on 17th June 1997, application has been filed by it before the State Government praying for direction to the Board not to disconnect the power supply of the petitioner on account of non payment of additional supplementary bill till the appeal filed by it under Section 36(2) of the Act, 1910, is finally decided by the appellate authority. It has further been stated by petitioner that it made an application to the respondent-Board on 17.6.97 praying therein not to insist for payment of additional supplementary bill and not to proceed for disconnecting the power supply till the matter is finally decided by the Deputy Secretary, Government of Gujarat. Further fact has been stated that the appellate authority has so far not intimated to the petitioner any date for final hearing of the appeal after it was adjourned on 28th May 1997 nor any date for hearing for interim relief application of the petitioner has been intimated so far.

5. Reply to the Special Civil Application has been filed by respondent and therein reasons have been given for issuance of additional supplementary bill. This reply has been filed by respondent on 6.10.97 and this matter has been heard on 11.12.97, but the learned counsel for the parties are in agreement that the appeal is still not decided by the State Government and the same is pending. Similarly, the application filed by petitioner for grant of interim relief against this additional supplementary bill is also stated to be pending. The learned counsel for the parties have not informed to this Court what order has been passed by the State Government on the application filed by the petitioner for stay/injunction against the Board from recovering the revised supplementary bill.

6. Though the learned counsel for the petitioner has made manifold contentions but I do not consider it to go on any of the contentions because if any finding is given on merits of the matter by this Court, then it will prejudice the case of either of the parties before the appellate authority where the appeal of the petitioner is admittedly pending. The petitioner admittedly has filed application for grant of stay and/or injunction against the additional supplementary bill before the appellate authority and the same is stated to be pending. In the appeal, the petitioner is allowed to move the application for stay/injunction and if such an application is being moved, then it is obligatory on the part of the appellate authority to decide the same on merits in accordance with law. While dealing with such matters of grant of stay or

injunction, the appellate authority has to take into consideration the underlying principles as laid down by this Court in series of decisions as well as the Apex Court. The approach of the appellate authority to sit tight over such matters, results in unnecessary and avoidable litigations before this Court. This is the third such litigation before this Court in the matter of interim relief to be granted to the petitioner. It is not in the larger interest of both, the petitioner and the Board that such matter is being kept pending indefinitely. Such matters pertaining to recovery of electricity consumption charges should be disposed of by the concerned authorities including the appellate authority as expeditiously as possible so that the money of the Board may not be unnecessarily blocked. Huge amounts of payment of electricity consumption charges are being put under stay either by this Court or by other Courts or by the appellate authority and ultimately where the matters are decided against the consumers, the Board is deprived of that money for years together. However, merely because the appellate authority has not dealt with expeditiously with this application for grant of stay/injunction, which is only an interlocutory and discretionary matter, I fail to see any justification in the action of the petitioner to approach this Court. It was only a case of some demand of electricity consumption charged by the Board.

7. In the result, the petitioner has no case on merits at this stage, in the matter. However, dismissal of this writ petition will not come in the way of the petitioner to approach the appellate authority praying for expeditious disposal of the appeal or application of interim relief for stay/injunction and if such prayer is made, it is expected of the appellate authority to decide the said application or appeal itself expeditiously so that this unnecessary and avoidable litigation may not further result before this Court. The writ petition is dismissed. No order as to costs.

(S.K.Keshote, J)

(sunil)